

MATTER OF GUPTA

In Section 212(e) Proceedings

A-12151065

*Decided by Deputy Associate Commissioner February 20, 1970*

"Exceptional hardship" within the meaning of section 212(e) of the Immigration and Nationality Act is established by an exchange alien whose United States citizen child, during a prior visit to the country of applicant's nationality, suffered exceptional hardship because of medical illnesses and disorders due to unfavorable climatic conditions and unavailability of food to which accustomed, since it is reasonable to assume that return to the same country would again impose exceptional hardship upon the child.

The decision of the Regional Commissioner on November 3, 1969, dismissing the appeal from the decision of the District Director denying the subject's application for a waiver of the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, on the ground that exceptional hardship had not been established, has been certified to me for review pursuant to 8 CFR 103.4.

The applicant, Surendra Kumar Gupta, a thirty-four year old college professor, is a native and citizen of India. He was admitted to the United States as a nonimmigrant student on September 20, 1962 and changed his status to that of an exchange alien on December 13, 1962 to participate in a private exchange program sponsored by The Johns Hopkins University as a graduate student in the History Department. He is married to Swarna Keshi Gupta, a native and citizen of India, who was admitted to the United States as the spouse of an exchange alien. The application for waiver included his wife. They have two United States citizen children, Archana born May 10, 1966 in Baltimore, Maryland and Shailendra born December 19, 1968 in Fort Scott, Kansas. The family now resides in Pittsburg, Kansas.

Section 212(e) provides, in part, as follows:

... upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or